

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

VIRGINIA GARWOOD AND)
KRISTEN GARWOOD)
PLAINTIFFS,)

v.)

CAUSE NUMBER

STATE OF INDIANA, INDIANA)
DEPARTMENT OF REVENUE,)
GREG ZOELLER IN HIS)
INDIVIDUAL AND OFFICIAL)
CAPACITY AS THE INDIANA)
ATTORNEY GENERAL, STATE)
OF INDIANA, MICHAEL SMITH)
IN HIS INDIVIDUAL AND)
OFFICIAL CAPACITY AS AN)
EMPLOYEE WITH THE INDIANA)
ATTORNEY GENERAL,)
MICHAEL WARD IN HIS)
INDIVIDUAL AND OFFICIAL)
CAPACITY AS AN EMPLOYEE)
WITH THE INDIANA ATTORNEY)
GENERAL, ANDREW SWAIN)
IN HIS INDIVIDUAL AND)
OFFICIAL CAPACITY AS AN)
EMPLOYEE WITH THE INDIANA)
ATTORNEY GENERAL,)
KRISTEN KEMP IN HER)
INDIVIDUAL AND OFFICIAL)
AS AN EMPLOYEE WITH THE)
INDIANA ATTORNEY)
GENERAL,)
PAIGE BOGGS IN HER)
INDIVIDUAL AND OFFICIAL)
CAPACITY AS AN EMPLOYEE)
WITH THE INDIANA ATTORNEY)
GENERAL, KATHERINE)
ERBEZNICK IN HER)
INDIVIDUAL AND OFFICIAL)
CAPACITY AS AN EMPLOYEE)
WITH THE INDIANA ATTORNEY)

FILED

JUN 17 2011

U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

4 : 11 -cv- 0072 TWP -DML

GENERAL, HELDER PINTO)
IN HIS INDIVIDUAL AND)
OFFICIAL CAPACITY AS AN)
EMPLOYEE WITH THE INDIANA)
ATTORNEY GENERAL, TAMMY)
SOMERS IN HER INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY)
GENERAL, RICHARD WALTON)
IN HIS INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY,)
JENNIFER GALEZIEWSKI IN)
HER INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY,)
MATTHEW BROADWELL IN)
HIS INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY,)
SCOTT SUNDERMAN IN HIS)
INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY,)
ADRIENNE EAGEN IN HER)
INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY GENERAL,)
TODD VANSICKLE IN HIS)
INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN EMPLOYEE WITH THE)
INDIANA ATTORNEY,)
JOHN ECKERT IN HIS)
INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
THE COMMISSIONER OF THE)
INDIANA DEPARTMENT OF)
STATE REVENUE, JACK DAVIS)
IN HIS INDIVIDUAL AND)

OFFICIAL CAPACITY AS AN)
 EMPLOYEE OF THE INDIANA)
 DEPARTMENT OF STATE)
 REVENUE, JEFFREY COULTER)
 IN HIS INDIVIDUAL AND)
 OFFICIAL CAPACITY AS AN)
 EMPLOYEE OF THE INDIANA)
 DEPARTMENT OF REVENUE,)
 DOUGLAS KLITZKE IN HIS)
 INDIVIDUAL AND OFFICIAL)
 CAPACITY AS AN EMPLOYEE)
 OF THE INDIANA DEPARTMENT)
 OF REVENUE, LINDA LAWSON,)
 THE HUMAN SOCIETY OF THE)
 UNITED STATES, ANNE)
 STERLING, SCOTLUND)
 HAISLEY, JORDON CRUMP,)
 MICHAEL STAUB, LAUREN)
 BOWLING, RACHEL JONES,)
 AMY KRAUSS, THE HUMANE)
 SOCIETY OF MISSOURI,)
 UNNAMED)
 REPRESENTATIVE (A))
 OF THE HUMAN SOCIETY OF)
 MISSOURI, UNNAMED)
 REPRESENTATIVE (B) OF THE)
 HUMANE SOCIETY OF)
 MISSOURI, UNNAMED)
 REPRESENTATIVE (C) OF THE)
 HUMANE SOCIETY OF)
 MISSOURI, UNNAMED)
 REPRESENTATIVE (D) OF THE)
 HUMANE SOCIETY OF)
 MISSOURI, UNNAMED)
 REPRESENTATIVE (E) OF THE)
 HUMANE SOCIETY OF)
 MISSOURI, UNNAMED)
 REPRESENTATIVE (F) OF THE)
 HUMANE SOCIETY OF)
 MISSOURI, UNNAMED)
 REPRESENTATIVE (G) OF THE)
 HUMANE SOCIETY OF)
 MISSOURI, CANDICE STAUB,)
 TERRI SCOTT, NADINE ALLEE,)
 AND BRUCE LAHUE IN HIS)
 INDIVIDUAL AND OFFICIAL)

CAPACITY AS EMPLOYEE)
OF HARRISON COUNTY,)
HARRISON COUNTY, INDIANA)
HARRISON COUNTY BOARD)
OF COMMISSIONERS, LISA)
MARIE PITTMAN, JENNIFER)
CARNES, INDIANA STATE)
POLICE, SHANNON BURTON IN)
HER INDIVIDUAL AND)
OFFICIAL CAPACITY AS AN)
INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 8018), TRAVIS)
BAKER IN HIS INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 8015), G.W.)
JESSEE IN HIS INDIVIDUAL)
AND OFFICIAL CAPACITY)
AS AN INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 249), N.H.)
TEUSCH IN HIS INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 1537), SHAWN)
CLEMONS IN HIS INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 222), J.J. NOEL)
IN HIS INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 286), AND)
SCOTT STEWART IN HIS)
INDIVIDUAL)
AND OFFICIAL CAPACITY AS)
AN INDIANA STATE POLICE)
OFFICER (INDIANA STATE)
POLICE BADGE 1536),)
UNKNOWN INDIANA STATE)
POLICE OFFICER (A),)

UNKNOWN INDIANA STATE)
 POLICE OFFICER (B),)
 UNKNOWN INDIANA STATE)
 POLICE OFFICER (C))
 UNKNOWN INDIANA STATE)
 POLICE OFFICER (D),)
 UNKNOWN INDIANA STATE)
 POLICE OFFICER (E),)
 UNKNOWN INDIANA STATE)
 POLICE OFFICER (F),)
 DEFENDANTS.)

NOTICE OF REMOVAL

Defendants, State of Indiana, Indiana Department of Revenue, Greg Zoeller in his official and individual capacity as the Indiana Attorney General, Michael Smith, Michael Ward, Andrew Swain, Kristen Kemp, Paige Boggs, Katherine Erbeznic, Helder Pinto, Tammy Somers, Richard Walton, Jennifer Galeziewski, Matthew Broadwell, Scott Sunderman, and Todd Vansickle, in their individual and official capacities as employees of the Indiana Attorney General's Office, John Eckert in his individual and official capacity as the Commissioner of the Indiana Department of Revenue, Jack Davis, Jeffrey Coulter, and Douglas Klitzke, in their individual and official capacities as employees of the Indiana Department of Revenue, Linda Lawson, Indiana State Police, Shannon Burton, Travis Baker, G.W. Jessee, N.H. Teusch, Shawn Clemons, J.J. Noel, and Scott Stewart, in their individual and official capacities as Indiana State Police Officers (hereinafter "State Defendants), by counsel, Cory C. Voight, Deputy Attorney General, pursuant to 28 U.S.C. §§ 1441(b) and 1446, hereby give notice of the removal of this action from Harrison Circuit Court, of Harrison County, Indiana to the United States District Court for the Southern District of Indiana, New Albany Division. In support, State Defendants submit:

1. This action was originally filed in the Harrison Circuit Court, on May 16, 2011, and assigned cause no. 31C01-1105-CT-24.

2. State Defendants were served with a Complaint and Summons in this action as required by Indiana law at the earliest on May 23, 2011.

3. This Notice of Removal is timely, having been filed within thirty (30) days after service of the Complaint and Summons on State Defendants, pursuant to 28 U.S.C. §1446(b).

4. Attached hereto are all pleadings, process and orders of the Court that have been served upon State Defendants in this action.

5. The Complaint in this action alleges violations of the Plaintiffs' civil rights guaranteed by the United States Constitution. (Complaint, Claims, A, B, & C brought pursuant to 42 U.S.C. § 1983). Thus, this case falls within the original jurisdiction of this Court founded on a claim or right arising under the Constitution or laws of the United States. *See* 28 U.S.C. §§ 1331, 1343, 1441(b) and 42 USC § 1983. The Complaint also asserts claims for relief under Indiana law over which this Court would have supplemental jurisdiction under 28 U.S.C. §1367.

6. All Defendants, who are identifiable and have been served in this matter, except one—Lisa Maria Pittman—consent to the removal of this action. *See* attached notices.

7. Defendant Lisa Maria Pittman is a nominal defendant to this matter, where there is no reasonable basis to conclude she could be liable. Also, the sole claim against her is a state tort, separate and independent of the removable claims. Her consent to removal or joinder in removal is not required.

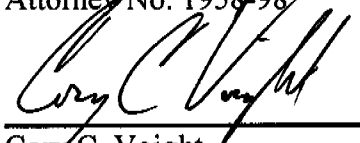
8. Adrienne Eagen has not been served as of the filing of this notice and need not consent to and join in the removal pursuant to 28 USC §1441(b).

9. Also, Carol Staub has not been served properly as of the filing of this Notice and need not consent to and join in the removal pursuant to 28 USC §1441(b). The Affidavit of Linda Hall is attached hereto and establishes that Ms. Hall incorrectly signed the certified mailing addressed to Carol Staub, which was sent to the business address for Honey Creek Animal Hospital in Terre Haute, IN, as she believed the certified mailing was intended for Candice Staub, an employee of the animal hospital. Ms. Hall knows no one named Carol Staub and did not intend to accept service on behalf of Carol Staub. The Affidavit of Anne Sterling, Director of the Humane Society of the United States for the State of Indiana, is attached and also establishes that Ms. Sterling knows of no one named Carol Staub involved in the June 2, 2009 animal rescue on Virginia Garwood's property.

10. Plaintiff will be given written notice of the filing of this Notice of Removal, and a copy of this Notice of Removal will be filed with the Clerk of the Harrison Circuit Court as required by 28 U.S.C. § 1446(d).

Respectfully submitted,
GREGORY F. ZOELLER
Indiana Attorney General
Attorney No. 1958-98

By:


Cory C. Voight
Deputy Attorney General
Attorney No. 23180-49

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing document, Notice of Removal, has been duly served upon all parties listed below by United States Mail, first-class postage prepaid, on this 17th day of June 2011, to:

Stacy K. Newton
Rudolph Fine Porter & Johnson
221 N.W. Fifth Street
Second Floor
P O Box 1507
Evansville, IN 47706-1507

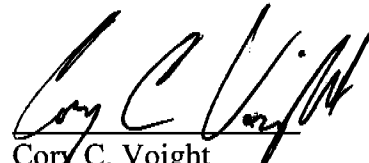
Robert Keen, Jr.
Carson Boxberger, LLP
1400 One Summit Square
Ft. Wayne, IN 46802

R. Jeffrey Lowe
Kightlinger & Gray, LLP
3620 Blackiston Blvd, Suite 200
New Albany, IN 47150

Peter J. Sewell
Sewell O'brien & Neal, PLLC
401 West Main Street, Suite 1800
Louisville, Kentucky 40202

Gordon Ingle
Faith Ingle Smith LLC
699 Hillview Dr.
Corydon, IN 47112

By:


Cory C. Voight
Deputy Attorney General

Office of the Attorney General
Indiana Government Center South – 5th Floor
302 W. Washington St.
Indianapolis, IN 46204-2770
Phone: (317) 233-8213
Fax: (317) 232-7979
Email: cory.voight@atg.in.gov